

## **REMARKS**

Claims 1-9 are pending in the present application. By this Amendment, Applicants have amended claim 1. Applicants respectfully submit that the present application is in condition for immediate allowance based on the discussion that follows.

The Examiner noted that the specification lacked reference to the prior application from which this application claims priority. By this Amendment, Applicants have amended the specification to provide proper reference to the prior application in accordance with 37 C.F.R. § 1.78(a)(2). Further, Applicants note that the present application is a continuation rather than a divisional of Application No. 09/194,020.

The Examiner noted a typographical error in the specification on page 6, line 3 where the character "δ" was inadvertently omitted. By this Amendment, Applicants have amended the specification to correct this oversight. Subject matter basis for this correction may be found in Figure 1, which clearly shows the δLTR region.

Claim 8 was rejected under 35 U.S.C. § 112, first paragraph, for containing subject matter which was not described in the specification in a way as to enable one skilled in the art to which it pertains to make and/or use the invention. The Examiner notes that the cell line TDF-2A is required in order to practice the claimed invention. Therefore, the Examiner states that deposit of the biological organisms is necessary for enablement of the current invention, citing 37 C.F.R. § 1.808(a). The Examiner acknowledges the deposit of the organism under Pasteur Institute National Collection of Microorganism Cultures (CNCM) accession number I-1712 is in partial compliance with this requirement. However, the Examiner notes the deposits are not in full compliance with 37 C.F.R. § 1.803-1.809. By this Amendment, Applicants attest that the deposit of

organisms corresponding to accession number I-1712 was made under the terms of the Budapest Treaty and all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon granting of a patent. Therefore, Applicants submit that the deposit requirements satisfy 37 C.F.R. § 1.808. Accordingly, Applicants respectfully request that the rejection to claim 8 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claims 1-9 and 1-5 and 9 were rejected under the judicially created doctrine of obviousness-type double patenting over claim 10 of U.S. Patent No. 6,280,970 and claim 15 of U.S. Patent No. 6,255,108, respectively. Contemporaneously filed with this Amendment, Applicants have submitted two Terminal Disclaimers disclaiming the term of any patent granted on this application which extends beyond the patent term of U.S. Patent No. 6,280,970 and 6,255,108. Therefore, Applicants respectfully request that the double patenting rejection to claims 1-9 and 1-5 and 9 based on U.S. Patent No. 6,280,970 and the double patenting rejection to claim 9 based on U.S. Patent No. 6,255,108 be withdrawn.

Claims 1-9 were rejected under 35 U.S.C. § 112, second paragraph as failing to include essential steps. By this Amendment, Applicants have amended claim 1 to be more consistent with conventional U.S. method claim form and to recite specific steps thereby obviating the rejection under 35 U.S.C. § 112, second paragraph. The amendment to claim 1 does not affect its scope in any way and therefore the amendment to claim 1 does not constitute new matter.

In addition, claims 1-9 were rejected under 35 U.S.C. § 112, second paragraph for using the phrase "on an avian cell line" and "comprising avian embryonic fibroblast cells". Applicants submit that the Amendment to claim 1 obviates these rejections.

The Examiner noted that the specification should be amended to include a subject heading for the brief description of the drawings. Applicant respectfully declines to accept the Examiner's suggestion to include subject headings such as "Brief Description of the Drawings" in the present specification as such a heading is not mandatory and moreover, due to recent changes to the method by which an applicant amends the specification, amending the specification to include this subject heading would incur unnecessary additional costs.

Claim 9 was rejected under 35 U.S.C. § 102(b) or in the alternative under 35 U.S.C. § 103(a) as being anticipated or obvious over Diseases, 1984, Vol. 28, No. 1, pages 168-78 (hereinafter Diseases).

Applicants respectfully submit that claim 9 is not obvious or anticipated by Diseases. Claim 9 is not directed to a virus per se but to a virus preparation. Consequently, claim 9 is not only directed to the virus itself but also impurities that are specific for the cell substrate used for the production of the virus. This is also true when the virus preparation is concentrated and/or purified as it is usual in the art. As a consequence, the use of an avian cell line according to claim 1, as a substrate, leads to unique virus preparations. Therefore, claim 9 recites novel and non-obvious constituents to distinguish claim 9 from the prior art reference, Diseases.

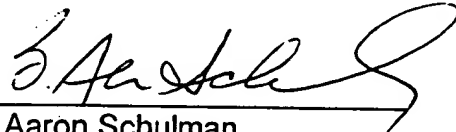
In view of the foregoing, Applicants respectfully submit that claim 9 is not anticipated and/or made obvious over Diseases and therefore Applicants respectfully request that the rejection to claim 9 based on Diseases be withdrawn.

In view of the foregoing, Applicants respectfully submit that the present application is now in condition for immediate allowance.

Respectfully submitted,

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## ATTACHMENT A

### Marked Up Replacement/New Paragraphs

At the following locations, a marked up copy of the replaced/new paragraph is provided.

#### **Page 1 after the title and before line 1:**

This is a continuation of U.S. Patent Application Serial No. 09/194,020 filed on  
June 23, 1999, now issued as U.S. Patent No. 6,280,970.

#### **Page 6, line 3:**

ΔLTR :      deleted LTR

## ATTACHMENT C

### Marked Up Replacement Claim

Following herewith is a marked up copy of rewritten claim 1.

1. A method for producing viruses, said method comprising:
  - infecting an avian cell line with a virus, wherein the avian cell line  
comprises producing viruses on an avian cell line comprising avian  
embryonic fibroblast cells and or their progeny which are immortalized, but  
untransformed and which comprise, in their genome, the SV40 T+t gene,
  - allowing the virus to propagate, and
  - harvesting the virus.